

TTAB

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of Application No. 76/441,065
Applicant: Nursing Solutions, Inc.
Mark: NURSEWORX
Filed: August 16, 2002
Published: March 18, 2003

AMN Healthcare, Inc., :
Opposer, :
v. :
Nursing Solutions, Inc., :
Applicant. :

Opposition No.: 91156535

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Date: July 29, 2005

Commissioner for Trademarks
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APPLICANT'S RESPONSE TO OPPOSER'S
MOTION FOR SUMMARY JUDGMENT

Introduction

Summary judgment is inappropriate in this case because there
are genuine issues of material fact pertaining to the ultimate
issue of likelihood of confusion between the Applicant's mark
NURSEWORX and Opposer's NURSESRX mark, and because, on the



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undisputed facts, Opposer is not entitled to judgment as a matter of law.

Brief summary of facts

On August 16, 2002, Nursing Solutions, Inc. filed its application for registration of the mark NURSEWORX for "nurse staffing services, namely, making nurses available to hospitals and other health-care providers." The application was assigned to International Class 35, the same class in which each of four versions of AMN's NURSESRX mark is registered, and was examined by Examining Attorney, Steven Foster. AMN's registrations identify its services as "temporary employment services in the nursing industry." Examining Attorney Foster did not cite any of AMN's registrations. (See attached Declaration of George A. Smith, Jr. and the attached Nursing Solutions' Exhibit 1.)

AMN constructs its case by relying upon unsupported assertions of "reckless"¹ adoption (Opposer's brief, pages 2 and 8); speculation about actual confusion (pages 21 and 22); and peripheral evidence concerning AMN's dominance (page 5), its huge revenues, its long period of use of NURSESRX, its promotional expenditures, its goodwill and fame (pages 7 and 20), the fact

¹If the Examining attorney did not cite any of AMN's registrations, Nursing Solutions' conduct can hardly be characterized as "reckless".

that it holds not just one, but four, registrations (pages 7 and 8), Nursing Solutions' prior controversy with another entity (pages 8 and 9), Nursing Solutions' decision to discontinue the use of its mark in a form in which the letter combination "RX" consisted of an upper case R and a lower case x (page 10)², search results showing that the two marks are the only ones that both begin with "NURSE" and end with "RX," and inherent strength of AMN's mark (page 15). AMN even constructs a straw man in the form of a supposed "argument" about channels of trade, which in reality was only an honest response to a request for admission; not an argument at all³.

When it comes to the central issue in the case, whether or not NURESEWORX so resembles NURSESRX as to cause a likelihood of confusion or mistake, or to deceive, when applied to the parties' services, AMN relies essentially on assertions concerning resemblances in the "sight, sound and meaning" (page 13) of the marks NURSEWORX and NURSESRX, based on the marks themselves

²See also page 132, lines 12-14, of the Gallagher deposition attached to Opposer's brief. Nursing Solutions objects to the admission of evidence concerning any change of the "RX" portion of its mark from Rx to RX under Rules 407 and 408 of the Federal Rules of Evidence.

³Nursing Solutions admits that the parties' services overlap. It does make an issue out of the differences; it simply does not admit that the services are identical.

considered in the abstract. AMN supplies no other evidence directly pertaining to the conditions under which the marks are used.

Nursing Solutions, submits herewith declarations of two experienced registered nurses, both of whom have knowledge of facts relevant to the context in which service marks relating to nurse staffing are used.

Nurse Colleen Goldsmith-Gegeckas points to the distinctly different pronunciations of NURSESRX and NURSEWORX: "nurses are ex", and "nurse works." Nurse Goldsmith-Gegeckas also points out that NURSESRX and NURSEWORX have different connotations, NURSESRX creating a mental picture of a drug company affiliation or a "prescription" for nursing, whereas her mental image generated by the mark NURSEWORX is a picture of nurses working. She also points out that NURSESRX and NURSEWORX are also readily distinguishable in visual appearance. Nurse Goldsmith-Gegeckas also points out that patients in hospitals are routinely made aware of the names of the nurses charged with their care, by verbal announcement, and also by posting of the nurses' names on whiteboards or other signs in the patients' rooms, and that the patients usually distinguish between nurses on the basis of the nurses' names, and not by the names of the nurses' staffing organizations as shown on their badges. She states that any

patient complaints about the performance of their nurses are ordinarily made by identifying a nurse or nurses by name to the hospital administration. Finally, she expressed the opinion that it is very unlikely that nurses, staffing coordinators, patients, or anyone else, would confuse NURSEWORX with NURSESRX, even though both are used in connection with nurse staffing services.

The declaration by Nurse Karen Asper similarly points to the fact that NURSESRX and NURSEWORX have different pronunciations: "nurses are ex", and "nurse works." Nurse Asper's mental pictures of the respective marks are different from those of Nurse Goldsmith-Gegeckas; NURSESRX conjures up an image of "TOYS R US" or of a prescription symbol used with nurse staffing, while NURSEWORX conjures up an image of nurses working efficiently or who "can do their job." Nurse Asper adds that she does not make a mental connection with a prescription symbol when she hears or sees the name NURSEWORX. Nurse Asper confirms that nurses most often learn about nurse staffing service organizations by word of mouth from other nurses, and states that NURSESRX and NURSEWORX "have different visual appearances, and are easily distinguished from each other on the basis of their appearance." Finally, Nurse Asper states that patients in hospitals "distinguish between nurses on the basis of the nurses'

names, and not by the names of the nurses' staffing organizations as shown on their badges", and that "patient complaints about the performance of their nurses are ordinarily made by identifying a nurse or nurses by their names to a nursing supervisor."

Argument

Though a finding of similarity as to any one of the three parts of the "sight-sound-meaning" trilogy can support a finding of likelihood of confusion, it will not automatically result in a finding of a likelihood of confusion even when the goods are identical or closely related. In re Lamson Oil Co., 6 U.S.P.Q.2d 1041, n.4 (T.T.A.B. 1987). To arrive at a realistic evaluation of the likelihood of buyer confusion, the court must attempt to recreate the conditions under which prospective purchasers make their choices. J. Thomas McCarthy, McCarthy on Trademarks and Unfair Competition, vol. 3 §23:58, 23-174.1 (4th Ed, West 2005), citing Quaker Oats Co. v. General Mills, Inc., 134 F.2d 429, 56 U.S.P.Q. 400 (7th Cir. 1943).

The declarations submitted herewith establish that there are genuine issues as to the resemblance of the parties' marks in sound, connotation, and visual appearance, and address the issue of likelihood of confusion in the appropriate context.

Similarity of sound may be particularly important when the goods are of the type frequently purchased by verbal order.

Krim-Ko Corp. v. Coca-Cola Bottling Co., 390 F.2d 728, 156

U.S.P.Q. 523 (C.C.P.A. 1968). In the present case, sound is the most important category at least insofar as the temporary nurse customer base is concerned, as AMN has admitted that "By far, word-of-mouth referrals from AMN's thousands of current and former temporary healthcare professionals are AMN's most effective recruiting tool," and that "Like AMN, Applicant attracts nurse employees by word-of-mouth referrals from other nurses." (Opposer's brief, pages 6 and 9) The declarations establish beyond question that, despite AMN's assertion that "Both marks beginning with "NURSE" and end with the "ks" consonant sound," the two marks are so distinctly different in sound that there is no possibility of confusion. There is no evidence, for example, that anyone would pronounce AMN's mark "nurses erks."

The connotations of the respective marks are also distinctly different, as established by the declarations of Nurses Goldsmith-Gegeckas and Asper.

Concerning the visual appearances of the marks, AMN argues that the respective marks both start with "NURSE," end in "RX," and differ in the middle only by the substitution of "WO" for "S." This mechanical approach gives far too little credit to the relevant users of the staffing services for their ability to

perceive differences. The appearance of NURSEWORX is clearly distinguishable from NURSESRX. A common feature of both marks is the component "NURSE," (the word being in the plural in NURSESRX). However, if the common element of two marks is "weak," that is, descriptive, highly suggestive, or in common use by others in the market, there is a reduced likelihood of confusion. Nestle's Milk Products, Inc. v. Baker Importing Co., 182 F.2d 193, 86 U.S.P.Q. 80 (C.C.P.A. 1950). Knapp-Monarch Co. v. Poloron Products, Inc., 134 U.S.P.Q. 412 (T.T.A.B. 1962). Here, the common element, "NURSE," is suggestive of nurse staffing services. The remaining parts of the marks, the components "WORX" and "RX," sufficiently distinguish the marks from each other.

AMN apparently recognizes that hospital staffing coordinators and nurses are unlikely to be confused, mistaken or deceived by similarities in appearance, because, at page 13, they refer to "patients and hospital staff," avoiding mention of the individuals who are in a position to affect the parties' business, namely, nurses and staffing coordinators.

Insofar as staffing coordinators at hospitals and other healthcare facilities are concerned, it must be assumed that any or all of the three categories of perception might come into play. The declarations establish not only that there are

substantial differences in pronunciation of the marks, but also substantial differences in connotation and visual appearance. Moreover, a staffing coordinator could not possibly perform his or her job without well knowing the identity of the staffing organization with which he or she is dealing. AMN has submitted no evidence showing how there would be occasion for confusion on the part of a staffing coordinator.

There are also issues as to whether or not a patient might be confused, and what the consequence of such confusion, if any, might be. A patient, of course, is not in a position to influence a hospital's choice of a temporary staffing agency. For items sold to businesses, only those who might influence future purchases can be considered in determining the likelihood of confusion. Electronic Design & Sales, Inc. v. Electronic Data Systems Corp., 954 F.2d 713, 21 U.S.P.Q.2d 1388, 1392 (Fed. Cir. 1992) As pointed out in the declaration of Nurse Goldsmith-Gegeckas, patients generally learn the names of their nurses, and make any complaints by identifying the nurse or nurses by name to the hospital administration. The hospital administration, on the other hand, will know whether or not the nurse about whom a complaint is made is an agency nurse, and which agency he or she is affiliated with. Thus, even in instances in which a hospital is utilizing staffing services of both AMN and Nursing Solutions,

patients would not identify a nurse by his or her staffing agency affiliation, and there would be little likelihood that a patient would make a mistake by confusing a NURSESRX name tag with a NURSEWORX name tag. Even if such a mistake were made, any complaint or compliment would most likely go to the hospital administration, probably through a nursing supervisor. (Asper declaration, paragraph 10) Thus, it is not apparent how such a mistake, if made, could either harm AMN or unfairly benefit Nursing Solutions. Other hospital staff are in a similar position insofar as their ability to influence the facility's choice of a nurse staffing agency is concerned.

The Opposer points to some early uses, by Nursing Solutions of a style in which the "x" in NURSEWORX appears in a smaller size, thereby converting the letters "RX" to a form resembling a prescription symbol "Rx."

Concerning the question of likelihood of confusion between its marks and the variation of NURSEWORX comprising a large "R" and a small "x," AMN has presented only its several registrations, its identification badge (See the attachments to AMN's Machado declaration), Nursing Solutions' original Pennsylvania service mark application on "NurseWoRx," which has been superseded by a new application on "NurseWorx," (Gallagher deposition exhibits 28 and 33), and several Nursing Solutions

documents using "NurseworRx", e.g. the documents numbered 128, 129, 131. AMN has presented no evidence establishing a close visual resemblance between its marks (whether in the form NURSESRX or in the stylized forms shown its registrations 2,609,424, 2,49,612, 2,692,365 or its identification badge) and the earlier uses by Nursing Solutions. On the other hand, in the deposition of Nursing Solutions' president, Marie Gallagher, taken by AMN's attorney, Ms. Gallagher squarely denies that the NURSEWORX mark with the RX in the form of a pharmacy symbol would be confusingly similar to AMN's "Nurses Rx." (Gallagher deposition, pages 117-118, and 133, attached to G. A. Smith declaration as Nursing Solutions' Exhibit 2.)

Even if the stylized forms were deemed confusingly similar, the issue in this opposition is whether or not, if a registration were granted to Nursing Solutions, the mark, as registered, would so resemble AMN's marks as to be likely to cause confusion or mistake, or to deceive. According to authorities such as Phillips Petroleum Co. v. C. J. Webb, Inc., 442 F2d. 1376, 1790 USPQ 35 (CCPA 1971), and INB National Bank v. Metrohost, Inc., 22 USPQ2d 1585 (TTAB 1992), if an applicant's trademark drawing shows the mark typed in plain capital letters, the application is "not limited to the mark depicted in any special form." Thus, in determining likelihood of confusion, the Board may consider other

forms in which the mark may appear, including specimens used by the applicant. In both Phillips, and INB, the applicant sought registration of a multiple word mark in block letter form, but, in use, deemphasized some of the words to the extent that the remainder, which closely resembled the opposer's mark, stood out. Thus, in Phillips, the applicant sought a registration of CRC MARINE FORMULA 66-6, but deemphasized the component CRC MARINE FORMULA to the point of being inconspicuous, so that the remainder, "66-6," which closely resembled the opposer's mark "66," stood out. Likewise, in INB, the applicant sought a registration of CORPORATE DOLLARS PASSPORT, but deemphasized the component CORPORATE DOLLARS to the point of being inconspicuous, so that the remainder, "PASSPORT," which was identical to the opposer's mark "PASSPORT," stood out.

The case presently before the Board is readily distinguished. Here, a change from NURSEWORX to NURSEWORx would not be merely a matter of making one or more words of a multiple word mark inconspicuous, thereby emphasizing others. The change would effectively introduce an entirely new symbol, namely, the prescription symbol "Rx." Neither Phillips and INB, nor the rule (37 C.F.R. §2.51) on which they are based, supports the proposition that a registration gives the registrant the right to use its registered mark with a wholly new element added to it.

And, they do not support the proposition that, if a registration is granted to Nursing Solutions on NURSEWORX, it would necessarily give Nursing Solutions the legal right to use a prescription symbol as part of its mark.

As stated in Phillips, rule 2.51 means that the application is "not limited to the mark depicted in any special form." The practical effect of the rule is that a registration on a mark depicted in block letter form, will be supported, in a registration or post-registration proceeding, by a specimen showing the mark in any alternative form (stylized, or with a design) that creates the same commercial impression. The rule does not (and indeed, unlike a statute, it cannot) afford a registrant a "right to use" a mark in any form selected by the registrant. For example, a registration does not afford the registrant the right to pass off his product and create consumer confusion by changing the style of the lettering to resemble that of a competitor. By way of example, Maxim's of Paris holds a registration, 1,415,264, on MAXIM'S DE PARIS for restaurant services. The Board can be reasonably confident that, if Maxim's were to use one of its "M"s in the form of a pair of arches, McDonalds would lose no time in complaining, and the courts would have little hesitation in finding in McDonalds' favor. Accordingly, even if there were no issue of fact concerning

confusion as a result of the "Rx" format, and even if the NURSESRx and NURSEWORx were considered confusingly similar as a matter of law despite the evidence to the contrary, it would be an unwarranted extension of the holding in Phillips to assume that a registration on NURSEWORX would necessarily give Nursing Solutions the legal right to use the form NURSEWORx, for example, and conclude on that basis that Nursing Solutions is not entitled to registration.

Conclusion

For the above reasons, Nursing Solutions respectfully requests that the Board deny AMN's motion for summary judgment. The Board is also requested to consider the entry of summary judgment in favor of Nursing Solutions on the basis that Nursing Solutions is the one entitled to judgment as a matter of law.

DATED: July 29, 2005

Respectfully submitted,
HOWSON and HOWSON
Attorneys for Applicant
Nursing Solutions, Inc.

By: 

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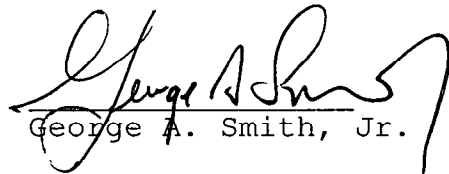
Attachments:

- (a) Declaration of Colleen Goldsmith-Gegeckas
- (b) Declaration of Karen Asper
- (c) Declaration of George A. Smith Jr. with exhibits 1 and 2

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and complete copy of the foregoing APPLICANT'S RESPONSE TO OPPOSER'S MOTION FOR SUMMARY JUDGMENT, including all attachments referred to therein, has been served upon Lisa M. Martens and Gregory M. Krakau, attorneys for Opposer, by mailing said copy on July 29, 2005 by first class mail, postage prepaid to:

Lisa M. Martens and
Gregory M. Krakau
FISH & RICHARDSON P.C.
12390 El Camino Real
San Diego, California 92130


George A. Smith, Jr.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of Application 76/441,065
Applicant: Nursing Solutions, Inc.
Mark: NURSEWORX
International Class: 35
Filed: August 16, 2002
Published: March 18, 2003

AMN HEALTHCARE, INC.
Opposer

v.

Opposition No. 91156535

NURSING SOLUTIONS, INC.
Applicant

DECLARATION OF COLLEEN GOLDSMITH-GEGECKAS

I, Colleen Goldsmith-Gegeckas, declare:

1. My address is 134 Kings Highway, Mount Royal, New Jersey, 08601.
2. I am a Registered Nurse, and am currently employed by Nursing Solutions, Inc. I am currently inactive, but am still employed by Nursing Solutions, Inc.
3. I studied radiologic technology at Holy Family College in Philadelphia, Pennsylvania, and, after leaving Holy Family College to start a family, I entered Community College of Philadelphia (CCP) to study Nursing. I graduated from CCP in 1999. Following graduation from CCP, I was employed at Holy Redeemer Hospital in Meadowbrook, Pennsylvania, as a medical-surgical nurse for approximately nine months, until April, 2000. Beginning in May 2000, I was trained at Albert Einstein Hospital in Philadelphia, Pennsylvania

as an intensive care unit (ICU) nurse. Beginning in June 2001, I became employed by Nursing Solutions, Inc. As an employee of Nursing Solutions, Inc., I have been assigned to temporary staffing duties at a number of hospitals and other facilities in and near Philadelphia, including Chestnut Hill Hospital, Holy Redeemer Hospital, Montgomery Hospital, Lower Bucks Hospital, Medical College of Pennsylvania, and Transcare Ambulance. I am competent to testify to all the matters stated in this declaration.

4. I am aware of Nursing Solutions' use of NURSEWORX, and am also aware of AMN Healthcare's use of NURSESRX, both in connection with nurse staffing services.

5. I know of no instances of actual confusion between NURSEWORX nurse staffing services and NURSESRX nurse staffing services.

6. NURSESRX and NURSEWORX have different pronunciations: "nurses are ex", and "nurse works."

7. NURSESRX and NURSEWORX have different connotations. NURSESRX creates a mental picture of a drug company affiliation or a "prescription" for nursing. My mental picture of NURSEWORX is a picture of nurses working.

8. NURSESRX and NURSEWORX are also readily distinguishable in visual appearance.

9. Individual nurses are aware of the identity of the organization they are dealing with when selecting a nurse staffing organization for their employment.

10. Patients in hospitals are routinely made aware of the names of the nurses charged with their care, by verbal announcement, and also by posting of the nurses' names on

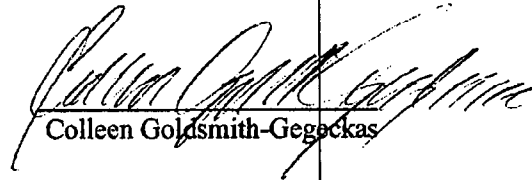
whiteboards or other signs in the patients' rooms. Patients usually distinguish between nurses on the basis of the nurses' names, and not by the names of the nurses' staffing organizations as shown on their badges. Patient complaints, if any, about the performance of their nurses are ordinarily made by identifying a nurse or nurses by name to the hospital administration.

11. In my opinion, based on my experience as a nurse, it is very unlikely that nurses, staffing coordinators, patients, or anyone else, would confuse NURSEWORX with NURSESRX, even though both are used in connection with nurse staffing services.

12. All statements made herein are made on my personal knowledge.

13. I have been warned that willful false statements and the like are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and may jeopardize the validity of Nursing Solutions' service mark application 76/441,065 or any registration resulting therefrom. All statements made herein of my own knowledge are true and all statements made herein on information and belief are believed to be true.

7/29/05
Date


Colleen Goldsmith-Gegeckas

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of Application 76/441,065
Applicant: Nursing Solutions, Inc.
Mark: NURSEWORX
International Class: 35
Filed: August 16, 2002
Published: March 18, 2003

AMN HEALTHCARE, INC.
Opposer

v.

Opposition No. 91156535

NURSING SOLUTIONS, INC.
Applicant

DECLARATION OF KAREN E.ASPER

I, Karen E. Asper, declare:

1. My address is 1545 Terrace Drive, Maple Glen, Pennsylvania 19002.
2. I am a Registered Nurse, and am currently employed by Nursing Solutions, Inc.
3. I received the degree of Bachelor of Science in Nursing from the University of Delaware in 1986. Following graduation, I became a staff nurse for the neurosurgical floor at Medical College of Pennsylvania, and served in that capacity from August 1986 to August 1988. From September 1988 to August 1989, I served as a staff nurse in the surgical trauma intensive care unit of Abington Memorial Hospital in Abington, Pennsylvania. From December 1989 through September 1991, I worked as a traveling nurse for the AMN and Cross Country staffing agencies, serving assignments at various locations, including U.C. Davis Medical Center, U.C.

Irvine Medical Center, UCLA Medical Center and Hahnemann University Hospital in Philadelphia, PA. From October 1991 to September 1992, I served as Assistant Director of Nursing at Beverly Manor Capistrano Beach, in California. From July 1992 to May 1997, I served as a "Clinical II" RN in the ICU at Saddleback Memorial Medical Center in Laguna Niguel, California. From October, 1997 through March 1999, I served as a staff nurse (per diem) at University Medical Center at Stony Brook, New York. From May 1999 to March 2000, I served as staff nurse (per diem) at Medical College of Pennsylvania, and from March 2000 to April, 2004, I served as a staff nurse (per diem) at Abington Memorial Hospital. Since April 2004, I have been employed as an agency nurse by Nursing Solutions, Inc., with assignments primarily in the emergency departments of Chestnut Hill Hospital, Holy Redeemer Hospital, and Suburban Hospital, all in the Philadelphia area. I am competent to testify to all the matters stated in this declaration.

4. I am aware of Nursing Solutions' NURSEWORX mark, and am also aware of AMN Healthcare's NURSESRX mark.

5. I know of no instances of actual confusion between NURSEWORX nurse staffing services and NURSESRX nurse staffing services.

6. Nurses most often learn about nurse staffing service organizations by word of mouth, hearing about them from other nurses.

7. NURSESRX and NURSEWORX have different pronunciations: "nurses are ex", and "nurse works."

8. NURSESRX and NURSEWORX have different connotations. NURSESRX produces in my mind two different mental pictures, one being the well-known toy retailer, "TOYS Я US," and the other being a prescription symbol used in connection with nurse staffing.

NURSEWORX produces in my mind a picture of nurses working efficiently, or nurses that can do their job. I do not make a mental connection with the prescription symbol R when I hear or see the name NURSEWORX .


9. NURSESRX and NURSEWORX have different visual appearances, and are easily distinguished from each other on the basis of their appearance.

10. Patients in hospitals are routinely aware of the names of their nurses, and usually distinguish between nurses on the basis of the nurses' names, and not by the names of the nurses' staffing organizations as shown on their badges. Patient complaints about the performance of their nurses are ordinarily made by identifying a nurse or nurses by their names to a nursing supervisor.

11. All of the statements herein are made on my personal knowledge.

12. I have been hereby warned that willful false statements and the like are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and may jeopardize the validity of Nursing Solutions' service mark application 76/441,065 or any registration resulting therefrom. All statements made herein of my own knowledge are true and all statements made herein on information and belief are believed to be true.

7/28/05
Date


Karen E. Asper

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of Application 76/441,065
Applicant: Nursing Solutions, Inc.
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AMN HEALTHCARE, INC.
Opposer

v. Opposition No. 91156535

NURSING SOLUTIONS, INC.
Applicant

DECLARATION OF GEORGE A. SMITH, JR.

I, George A. Smith, Jr., declare:

1. I am counsel for Nursing Solutions, Inc., and am competent to testify in this matter. I present this declaration to identify and present certain public records and deposition pages, the authenticity of which is not disputed, in support of Nursing Solutions' brief in opposition to AMN Healthcare's motion for summary judgment.

2. Exhibit 1, attached hereto, is a true copy of the TESS and TARR records, as of July 26, 2005, for Nursing Solutions' service mark application 76/441,065.

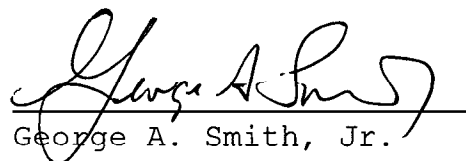
3. Exhibit 2, attached hereto, is a true copy of pages 117, 118 and 133 of the deposition of Marie Gallagher, taken on April 13 and 14, 2005 in this matter.

4. The signature pages and errata sheet for the deposition referred to in paragraph 3, above, were submitted by Opposer in support of it's motion for summary judgment.

5. All of the statements herein are made on my personal knowledge.

6. I have been hereby warned that willful false statements and the like are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and may jeopardize the validity of Nursing Solutions' service mark application 76/441,065 or any registration resulting therefrom. All statements made herein of my own knowledge are true and all statements made herein on information and belief are believed to be true.

July 29, 2005
date


George A. Smith, Jr.



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Typed Drawing

Word Mark	NURSEWORX
Goods and Services	IC 035. US 100 101 102. G & S: nurse staffing services, namely, making nurses available to hospitals and other health-care providers
Mark Drawing Code	(1) TYPED DRAWING
Serial Number	76441065
Filing Date	August 16, 2002
Current Filing Basis	1B
Original Filing Basis	1B
Published for Opposition	March 18, 2003
Owner	(APPLICANT) Nursing Solutions, Inc. DBA Nurseworx Nursing Solutions CORPORATION PENNSYLVANIA 500 Southampton Road Philadelphia PENNSYLVANIA 19116
Attorney of Record	George A. Smith, Jr
Type of Mark	SERVICE MARK
Register	PRINCIPAL
Live/Dead Indicator	LIVE

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v. Nursing Solutions, Inc.
Opposition 91156535
Nursing Solutions'
Exhibit 1

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2005-07-26 14:40:19 ET

Serial Number: 76441065

Registration Number: (NOT AVAILABLE)

Mark (words only): NURSEWORX

Standard Character claim: No

Current Status: An opposition is now pending at the Trademark Trial and Appeal Board.

Date of Status: 2003-06-06

Filing Date: 2002-08-16

Transformed into a National Application: No

Registration Date: (DATE NOT AVAILABLE)

Register: Principal

Law Office Assigned: LAW OFFICE 106

Attorney Assigned:
FOSTER STEVEN R Employee Location

Current Location: 657 -Pre-Publication Final Review

Date In Location: 2004-09-22

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. Nursing Solutions, Inc.

Address:

Nursing Solutions, Inc.
500 Southampton Road
Philadelphia, PA 19116
United States

Legal Entity Type: Corporation

State or Country of Incorporation: Pennsylvania

GOODS AND/OR SERVICES

International Class: 035

nurse staffing services, namely, making nurses available to hospitals and other health-care providers

First Use Date: (DATE NOT AVAILABLE)

First Use in Commerce Date: (DATE NOT AVAILABLE)

Basis: 1(b)

ADDITIONAL INFORMATION

(NOT AVAILABLE)

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

2004-09-13 - Case File in TICRS

2003-06-06 - Opposition instituted for Proceeding

2003-04-17 - Extension Of Time To Oppose Received

2003-03-18 - Published for opposition

2003-02-26 - Notice of publication

2003-01-13 - Approved for Pub - Principal Register (Initial exam)

2003-01-09 - Case file assigned to examining attorney

CORRESPONDENCE INFORMATION

Correspondent

George A. Smith, Jr (Attorney of record)

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1 registration?

2 A My knowledge is limited as to what is okay
3 or not okay. I would think I could use it with lower
4 case letters.

5 Q Could you use it with any combination of
6 upper case and lower case letters?

7 A I'm not sure.

8 Q You said you thought you could use it with
9 a capital N and a capital W?

10 A Uh-huh.

11 Q Could you use it with a capital N, a
12 capital W and a capital R right before the X?

13 A I'm not sure if I could. I don't know if
14 legally I could. I don't know.

15 Q Could you use it with the R-X in the form
16 of a pharmacy symbol.

17 A Could I? That's more of a logo-type thing
18 to me, I guess. So no.

19 Q Would it be covered by the registration if
20 you used it in that fashion?

21 A I don't know.

22 Q If I told you it could be used in that
23 fashion and be covered by the registration, would that
24 change your opinion about the similarity of Nursing
25 Solutions' Nurse Worx mark to AMN's Nurses Rx mark?

1 A Would that change my opinion?

2 Q Yes.

3 A No.

4 Q In other words, you believe that
5 Nurse Works could use the Nurse Worx mark with the Rx
6 in the form of the pharmacy symbol without creating
7 any confusion with the Nurses Rx mark?

8 A As I said at the beginning, I did not
9 think it was confusing. They're two separate words
10 versus one word with two letters.

11 Q But they're not separate words, are they?
12 It's a single word.

13 A I guess you could say that if there's not
14 a space, but you can still tell they're two words, in
15 my opinion.

16 Q If that's the case, then why did Nursing
17 Solutions stop using the Rx in the form of the
18 pharmacy symbol?

19 A To make AMN happy and to make this go
20 away.

21 As I stated earlier, I believe, that
22 the Rx symbol meant nothing to me except that it was
23 kind of catchy. That is not what Nurse Worx is known
24 as. People don't say "Nurse Worx" and think of a
25 pharmacy symbol and never have. My name is what was

1 Q But you could?

2 A I don't know if that's legal or not. I
3 have no idea.

4 Q If I told that your registration of a
5 trademark in all capital letters allows the mark to be
6 used in any form, would that change your opinion?

7 A If your information is correct, then I
8 assume I could use it in any form.

9 Q And that would be problematic for AMN,
10 wouldn't it?

11 A Possibly in AMN's opinion. Not in my
12 opinion.

13 Q So it's your testimony that even if the
14 Nurse Worx mark depicted the R-X in the form of the
15 pharmacy symbol, that would not be confusingly similar
16 to AMN's Nurses Rx mark?

17 A I don't believe so.

18 Q But you changed the Nurse Worx mark to
19 avoid that anyway?

20 A Yes, to make this go away.

21 Q You even went so far as to request
22 withdrawal and cancellation of a prior registration --

23 A Correct.

24 Q -- for the Nurse Worx mark?

25 Could you make this go away by